### UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

IN RE BIOPURE CORPORATION SECURITIES LITIGATION	)	Master Docket No. 1:03-CV-12628 (NG)
	)	Assigned to Judge Nancy Gertner
	)	
	)	

### DEFENDANTS MOTION FOR JUDICIAL NOTICE OF SEC FILINGS<sup>1</sup>

In connection with this Court's consideration of Defendants' motion to dismiss the amended complaint and opposition to Plaintiffs' motion for leave to amend, Defendants respectfully move this Court to take judicial notice of publicly available documents filed by Biopure with the Securities and Exchange Commission that are germane to the Defendants' motion to dismiss and opposition to Plaintiffs' motion for leave to amend. Defendants make this motion with respect to documents attached hereto as Exhibit A (certain Form 4's concerning Defendant Moore's purchases of Biopure's stock during the class period, filed with the SEC).

This Court may take judicial notice of the aforesaid documents without converting the motion to dismiss into a motion for summary judgment. See, e.g., In re Stone & Webster, Inc. Sec. Litig., 253 F. Supp. 2d 102, 128 & n. 11 (D. Mass. 2003) (district court may consider documents required to be filed and actually filed with the SEC on a motion to dismiss); see also Fed. R. Evid. 201(b)(2).

The Form 4's attached hereto demonstrate that Defendant Moore purchased stock during the putative class period, relevant to Plaintiffs' burden of pleading a strong inference of scienter.

<sup>1</sup> This motion is filed on behalf of Defendants Biopure Corporation, Thomas A. Moore, Howard P. Richman, Carl W. Rauch, Charles A. Sanders and J. Richard Crout (collectively, the "Defendants").

WHEREFORE, Defendants respectfully request that this motion be granted in all respects.

February 1, 2006

Respectfully submitted,

BIOPURE C'ORPORATION, THOMAS A. MOORE, HOWARD P. RICHMAN, RONALD RICHARDS, CARL W. RAUSCH, CHARLES A. SANDERS AND J. RICHARD CROUT

By their attorneys,

/s/ Michael D. Blanchard

Robert A. Buhlman, BBO #554393 Michael D. Blanchard, BBO#636860 BINGHAM McCUTCHEN LLP 150 Federal Street Boston, MA 02110 (617) 951-8000

### **RULE 7.1(A)(2) CERTIFICATION**

I hereby certify that counsel for Defendants conferred with counsel for Plaintiffs in good faith to resolve or narrow the issues presented in this motion.

/s/ Michael D. Blanchard
Michael D. Blanchard

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above pleading was electronically served upon the attorneys of record for all parties on February 1, 2006.

/s/ Michael D. Blanchard
Michael D. Blanchard

### **EXHIBIT A**

### Page 1 of 2

# U.S. SECURITIES AND EX JANGE COMMISSION Washington, DC 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP or Form 5 obligations may continue. See Instruction 1(b). subject to Section 16. Form 4 Check this box if no longer

FOR 14

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

1. Name and Address of Reporting Person*	2. Issuer Name	2. Issuer Name and Ticker or Trading Symbol	g Symbol		6. Rela	Relationship of Reporting Person to Issuer	Person to Issuer	
Moore, Thomas A.	Biopure Co	Biopure Corporation BPUR	UR		<u></u>	ck all applicable)		
(Last) (First) (Middle) 166 Cherry Hill Road	3. IRS or Social San Reporting Per O16-38-7049	IRS or Social Security Number of Reporting Person (Voluntary)     016-38-7049	4	Statement for Month/Year March 25, 2003	Dir X o Presic	Director  X_ Officer (give title below)  President, CEO		10% Owner Other (specify below)
Street) Princeton, NJ 08540			5. If Amendment (Month/Year)	If Amendment, Date of Original (Month/Year)	7.	Individual or Joint/Group Filings (Check applicable line)  X Form filed by One Reporting Person Form filed by More than One Reporting Person	Filings Reporting Person han One Reportin	g Person
(City) (State) (Zip)	Tabl	Table I — Non-D	Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned	rities Acquir	ed, Disp	osed of, or Ber	neficially O	wned
<ol> <li>Title of Security</li> <li>(Instr. 3)</li> </ol>	2. Transaction Date (Month/ Day/ Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)	uired (A) (D) 5)		5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (f) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
		Code	Amount	(A) or (D)	Price			
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(Print or Type Responses) Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly

\*If the form is filed by more than one reporting person, see Instruction 4(b)(v).

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Table II — Derivative Securities Acquired, Disposed of, or Beneficial	
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FORM 4 (continued)

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9. Number of Derivative Securities Beneficially Owned at End of Month (Instr. 4)												
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1. Title of Derivative Security (Instr. 3)		тant										
<u></u>		Warrant			<u></u>							

Explanation of Responses:

\*\*Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a)

Note: File three copies of this Form, one of which must be manually signed. If space provided is insufficient, see instruction 6 for procedures

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Page 6 P.03/04 P.02/05 of 9 F-317 Document 101 Filed 02/01/2006 596690 T-303 Case 1:03-cv-12628-NG From-ERNST & YOUNG Apr-14-03 09:34am T-295 6178598690 FYOR-EMIST & YOUNG Apr-11-03 03:39pm

Page I of 2

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U.S. SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549

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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

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## FORM 4

U.S. SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549

Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b).

# STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

1. Name and Address of Renorting Person*		J. Leaning Manne								
		2. Issued realthe and Ticker of Trading Symbol	I IICKO OF IR	mang syn	iog:		-	6. Relationship of Reporting Person to Issuer	Person to Issuer	
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166 Cherry Hill Road		To I Summadou	our ( • Ollundar	2	April 15, 2003	2003	1	X_Officer (give title belo	- 1	Other (specify below)
		016-38-7049					<u>五</u>	President, CEO		
Street)					5. If Amendment, Date of Original	ent, Date of		Individual or Joint/Group	Filings	
Princeton, NJ 08540					(Month/Year)	æ		(Check applicable line)	ı	
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Class A Common Stock		4/15/03	Ъ		15,000	A	\$3.13	331,612	D	
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minder. Report on a separate line for each class of securities beneficially owned directly or indirectly extent to form is filed by more than one reporting person, see Instruction 4(b)(v).

(Print or Type Responses)

Page 1 of 2

Page 8 of 9

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Page 9 of 9

Table II — Derivative Securities Acquired, Disposed of, or Beneficially Owned (&R., puts, calls, warrants, outlons, convertible securities)

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(instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Trans- action Date (Month/ Day/ Year)	4. Trans-action	şo Co	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisab and Expiration Date (Month/Day/ Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Beneficially Owned at End of Month (Instr. 4)	eret E	11. Nature of Daring of Daring of Daring Cial Owner-1. Og Strip Strip Cial Cial Cial Cial Cial Cial Cial Cial
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